

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MISTY R. MAJORS)	
Claimant)	
VS.)	
)	Docket No. 239,644
SONIC DRIVE-IN)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Claimant appealed the preliminary hearing Order dated January 15, 1999, entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for an October 5, 1998 accident. After finding that claimant was injured during horseplay, the Judge denied claimant's request for medical and temporary total disability benefits.

Claimant contends the Judge erred. She contends that she was not engaged in horseplay at the time of the accident and that she fell after slipping on the wet floor.

The only issue before the Board on this appeal is whether the accident arose out of and in the course of employment or whether it occurred during horseplay initiated by claimant or in which she was a willing participant.

FINDINGS OF FACT

After reviewing the entire record compiled to date, the Board finds:

1. Misty Majors was employed as a carhop at the Sonic Drive-In located in Goddard, Kansas. During her shift on October 5, 1998, Ms. Majors fell and injured her right ankle.
2. Six witnesses testified at either the preliminary hearing or by deposition taken after the hearing. They provide at least four different versions of the events leading up to the accident.

3. The Board is most persuaded by the descriptions of the accident provided by Michael McGwire and Kimberly Thome. They testified that Chauncey Gruenwald approached Ms. Majors and grabbed her immediately before she fell. Mr. McGwire also testified that Ms. Majors fell on a wet floor as she was walking away from Mr. Gruenwald and after telling him to stop. Ms. Thome testified that Ms. Majors fell after Mr. Gruenwald placed her in a headlock and after Ms. Majors grabbed him in response. Both descriptions indicate Ms. Majors was not a willing participant.

CONCLUSIONS OF LAW

1. The accident arose out of and in the course of employment.
2. Worker's compensation benefits may be denied when an employee is injured as the result of horseplay initiated by that person.¹
3. The greater weight of the evidence indicates that Ms. Majors' accident occurred as described by either Mr. McGwire or Ms. Thome. In either event, the accident is compensable. Either Ms. Majors fell while walking away from Mr. Gruenwald or she fell because she was attempting to free herself from Mr. Gruenwald's grasp. Even under Ms. Thome's scenario, the injury did not occur as the result of horseplay initiated by Ms. Majors.
4. Based upon the above, for preliminary hearing purposes the Board concludes that the October 5, 1998 accident arose out of and in the course of Ms. Majors' employment with Sonic Drive-In.

WHEREFORE, the Appeals Board sets aside the finding made in the January 15, 1999 Order that claimant's accident is not compensable due to horseplay. The Appeals Board finds that Ms. Majors' accident arose out of and in the course of her employment with Sonic Drive-In and she is entitled to receive benefits under the Workers Compensation Act for this accident.

IT IS SO ORDERED.

Dated this ____ day of April 1999.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
P. Kelly Donley, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

¹ See Carter v. Alpha Kappa Lambda Fraternity, 197 Kan. 374, 417 P.2d 137 (1966).